

Memorandum
Fair Political Practices Commission

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: December 30, 2008

1. *California ProLife Council, Inc. v. Karen Getman, et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In 2000, the Federal District Court for the Eastern District of California dismissed certain counts and granted the FPPC's motion for summary judgment on the remaining claims. The Ninth Circuit Court of Appeal agreed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy if it can show a sufficient state interest for its rules. The Ninth Circuit remanded the matter to the district court to determine whether California could establish an interest sufficient to support its disclosure rules, and that those rules are properly tailored to that interest. On February 22, 2005, the district court granted defendants' motion for summary judgment on those questions. Plaintiff again appealed. The Ninth Circuit heard oral argument on February 12, 2007. On November 14, 2007, the court released its opinion under the name *California ProLife Council, Inc. v. Randolph*, finding that California had established its compelling interest in disclosure of the sources of funds used to make independent expenditures supporting or opposing ballot measures. The court did find, however, that when the entity making such expenditures was a multi-purpose non-profit group organized as a Section 501(c)(4) corporation, which did not make expenditures or contributions towards the election or defeat of candidates, the Commission failed to demonstrate how the ancillary rules involving registration as a recipient committee were sufficiently tailored to support California's compelling interest in disclosure. The Ninth Circuit remanded the case to the trial court without further instructions. The parties submitted proposed judgments and further briefing at the trial court's order. The court then entered an order and final judgment in the case, finding that plaintiff had prevailed on one of its ten claims, and entering judgment enjoining the Commission from imposing on plaintiff and similar groups the ancillary recipient committee rules referenced in the Ninth Circuit's opinion. The Commission had anticipated this judgment, and in December 2007 adopted Emergency Regulation 18413 to comply with the Ninth Circuit's ruling. Plaintiff then moved to recover in attorneys' fees and costs under 42 U.S.C. Section 1988. On September 30, 2008, the court awarded plaintiff partial attorneys' fees. Plaintiff then appealed, and the Attorney General filed a cross-appeal. The Ninth Circuit has scheduled these appeals for an arbitration assessment conference on February 2, 2009.